

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Approved For Release 2003/12/19 : CIA-RDP84B00890R000300040009-4

24 June 1981

General Counsel

OGC Has Reviewed

TO: Director of Central
Intelligence

THROUGH: Deputy Director of
Central Intelligence

STAT FROM:

General Counsel

Attached for your comment is (1) a detailed memorandum outlining the comments made by the NSC staff on section 1 of the draft executive order and adjustments we have made as a result of those comments, (2) a clean draft new executive order reflecting those adjustments as well as the changes to sections 2 and 4 previously agreed upon, (3) a spread sheet comparing the provisions of sections 1, 3, and 4 of the new draft with the existing Order, and (4) a draft note to Bob Kimmett, forwarding the draft order and spread sheet for NSC comment. We have also sent a copy to [redacted] and other Deputy Directors for their comments. If you have no problems with this approach, it is my intention to get these materials to the NSC staff on Friday or Saturday. For this reason, I would appreciate any comments you may have as soon as possible.

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OGC 81-05266
24 June 1981

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

STAT FROM:
General Counsel

SUBJECT: National Security Council Comments on
Intelligence Community Draft Revision of
Executive Order 12036

1. Members of my staff met yesterday with Mike Berta and Bob Kimmitt of the National Security Council (NSC) staff to discuss Section 1 of Executive Order 12036. The NSC staff feels that Section 1 is too long and detailed and contains many redundant provisions. They asked that we attempt to reduce the length of the section, eliminate unnecessary provisions, and combine similar or related provisions.

2. The NSC staff members had the following specific comments:

a. Budget. They stated that if the DCI wants to bypass OMB on the budget, Richard Allen would support him. Their idea is to have the DCI submit the NFIP budget directly to the NSC, with OMB playing an advisory role. We have made no change in the applicable provision (§1-501(u)).

b. Role of the NSC. They feel that it is important to specify that the NSC is the highest executive branch entity for the development of intelligence policies and programs. Thus, we have added "and the development of intelligence policies and programs" at the end of section 1-201, which specifies the functions of NSC.

c. NSC Guidance for DCI Functions. With respect to the duties of the DCI, section 1-501 makes it clear that the Director is responsible directly to the NSC. As an addition they would add that the DCI perform his duties "in accordance with policies developed by the NSC."

d. Elimination of Duplication in Activities. They want to qualify the requirement to eliminate unnecessary overlap in the NFIP and DoD programs with the phrase "consistent with the requirement to develop competitive analysis" (see §1-501(y)).

e. Counterintelligence. They want to delete the definition of counterintelligence contained in Section 4. Their feeling is that the DCI should coordinate national counterintelligence and that this definition is hampering his ability to do so. As an alternative to deletion of the definition, they would accept elimination of the proviso that excludes from counterintelligence "personnel, physical, document, or communications security programs." This change would end the current immunity of such programs from counterintelligence policy decisions.

3. Attached is a clean copy of the entire draft Order, with Sections 1 and 3 of the Order amended to reflect the further deletions, consolidations, and changes that we believe are possible to meet the comments of the NSC staff. We have accepted the NSC position with regard to Section 3. Also attached is a copy of a spread sheet for Sections 1, 3, and 4, which has been marked up to reflect the NSC comments and will allow you to compare the current language of Executive Order 12036 with the marked up version of the draft Order developed by the Intelligence Community. In addition, the new language of Section 1 reflects the DDCI's decision to accept language proposed by Frank Carlucci on five provisions that were disputed by DoD. All Section 1 changes are described below, but the draft should be consulted for exact language.

a. DCI as Head of CIA and Staff Elements (§1-501(b)). Eliminated as unnecessary.

b. DCI as Principal Intelligence Community Advocate to the Congress, News Media and Public (§1-501(c)). Eliminated as unnecessary.

c. DCI Authority to Develop Objectives and Guidance (§1-501(d)). The phrase "consistent with the requirements and priorities established by the NSC" has been eliminated since section 1-201 provides that the NSC is the highest authority for the review of all intelligence activities, policy and programs.

d. Authority to Establish Policy for and to Coordinate Liaison Activities (§1-501(g)). Since DEA will be eliminated from the Intelligence Community, a provision is necessary to ensure any liaison they conduct with foreign

intelligence or internal security services will be in accordance with DCI policy. This provision was part of section 4-105 of the Intelligence Community draft. Since the definition of intelligence has been deleted, section 1-501(g) has also been technically amended to reflect the fact that the DCI's liaison responsibilities encompass foreign intelligence and counterintelligence.

e. Participation in Formulation or Procedures for DEA Intelligence Programs (new section). This provision is necessary as a result of elimination of DEA from the Intelligence Community. It was formerly part of section 4-105 of the Intelligence Community draft.

f. Programs for Proper Classification of Foreign Intelligence (§1-501(h)). Eliminated as unnecessary.

g. DCI Responsibility for Security Standards (§1-501(i)). The DDCI has accepted Frank Carlucci's suggestion that we go back to the current language of Executive Order 12036.

h. DCI Responsibility to Protect Sources and Methods (§1-501(j)). The DDCI has accepted Frank Carlucci's suggestion that we go back to the language of section 1-604 of Executive Order 12036. However, we believe that the qualifications currently contained in sections 1-604(a) and (b) should be eliminated. Those provisions limit the DCI's responsibility in the United States to protecting against disclosures by only present or former employees or contractors, and limit his role to providing policy guidance and technical assistance to other departments and agencies. The elimination of those qualifications would give the DCI greater flexibility to ensure that appropriate programs to protect sources and methods are developed.

i. Provision of Intelligence to Agencies Not Within the Intelligence Community (§1-501(l)). Eliminated as unnecessary.

j. Requirement to Give Departments and Agencies Access to CIA Intelligence (§1-501(n)). Eliminated as unnecessary.

k. Authorities Relating to Tasking (§§1-501(q), (r) and (s)). We have attempted to combine these provisions into a shorter, more concise statement of authority. In the process we have eliminated the provision which calls for planning for transfer of tasking authority to the Secretary of Defense and which states that resolution of tasking

conflicts can be appealed to the NSC. Both of these actions can be accomplished as a practical matter without specific language in the Executive Order.

1. Authorities Relating to the Budget (§§1-501(t), (u) and (v)). We have attempted to consolidate these three authorities without any change in substance.

m. Requirement to Ensure with the Secretary of State that Collection and Special Activities are Consistent with United States Foreign Policy (§1-501(z)). Eliminated as unnecessary since other mechanisms exist for the Secretary of State's input to these activities.

4. Responsibility of Senior Officials of the Intelligence Community (§1-7):

a. Requirement of Heads of Departments and Agencies to Perform Obvious Functions and Responsibilities (§§1-701 through 1-705)). Eliminated as unnecessary.

b. Programs to Protect Foreign Intelligence through Proper Classification (§1-712). Eliminated as unnecessary.

c. Procedures for DEA Production and Dissemination of Narcotics Intelligence (new section). This provision will allow members of the Intelligence Community to participate in the development of procedures to ensure that Intelligence Community agencies will receive DEA reporting and finished intelligence. It was formerly part of section 4-105 of the Intelligence Community draft.

5. CIA Authorities (§1-8):

a. Authority to Collect, Produce and Disseminate Foreign Intelligence (§§1-801 and 1-802). These wordy, detailed provisions have been combined in a new, shorter section.

b. Authorities with Respect to Counterintelligence (§§1-804, 1-805 and 1-807). These provisions have been combined in two shorter, more concise provisions, which include the authority to coordinate counterintelligence activities abroad and the authority to coordinate clandestine collection abroad. In accordance with the DDCI's decision, we have eliminated the word "all" before "counterintelligence" so as to exclude DoD counterintelligence activities involving military personnel from the coordination requirement.

c. Authority to Conduct Covert Action (\$1-808). This section, giving CIA authority to conduct covert action, has been combined with section 2-306 to provide that only CIA can conduct such activities unless the President makes a contrary determination. This change is necessary as a result of revision of Section 2.

6. Authorities of the Secretary of State.

General Authorities.

a. Sections 1-901 through 1-903 have been combined.

b. Section 1-904, which requires the Secretary of State to ensure with the DCI that collection and special activities are consistent with United States foreign policy, has been eliminated as unnecessary since other mechanisms exist to provide the Secretary's input.

7. Authorities of the Secretary of Defense.

a. Authority to Collect Foreign Intelligence (\$1-1102). The authority of the Secretary of Defense has been shortened by elimination of specific categories of military-related foreign intelligence.

b. Authority over NSA, Defense and Military Intelligence and National Reconnaissance Entities (\$1-1105). Eliminated as unnecessary.

c. Authority to Review Budget Data (\$1-1108). Eliminated as unnecessary.

d. Authority for Audits (\$1-1109). Eliminated as unnecessary.

e. Authority for Military Liaison (\$1-1112). In accordance with the DDCI's decision, the words "and procedures" have been eliminated. This modification was suggested by Frank Carlucci.

f. Requirement to Ensure with the DCI that There Is No Unnecessary Overlap in Programs (\$1-1113). Eliminated since the provision is retained under the DCI's authorities.

g. Authority for NSA Cryptologic Liaison (\$1-1202(1)). In accordance with the suggestion by Frank Carlucci, the provision has been changed to reflect the

DDCI's decision that only NSA liaison for intelligence purposes should be subject to policies formulated by the DCI. NSA liaison on COMSEC matters would not be subject to DCI policy. The words "and procedures" have been eliminated as suggested by DoD.

h. Authority for the Military Services to Collect Foreign Intelligence (\$1-1204(a)). This provision has been shortened to eliminate specific categories.

8. Section 1-1301, which provides a statement of the Secretary of Energy's authority with respect to intelligence collection, has been shortened.

9. Definition of "Intelligence Activities" (new section). We have added a definition of the term "intelligence activities" to Section 4 to realize fully an exemption given to the Intelligence Community by the Paperwork Reduction Act. The Act provides an exemption for intelligence activities as defined by Executive Order 12036 or its successor, but the current Order does not contain a definition of that term and thus does not clearly encompass all the activities we believe Congress intended to exempt from the Act.

10. Once we have agreed which of the foregoing changes are acceptable, we should send the shortened Section 1 to the NSC staff for comment. Assuming their acceptance, we would then send the entire new draft Order to the Community for comment. We would like to be able to have your agreement, by COB Thursday, 25 June 1981, to send the new Section 1, along with a clean copy of the rest of the draft Order, to the NSC staff so that we may obtain the expedited concurrence of the NSC staff and possibly send out the draft to the Community by the end of the week.



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cc: D/ICS
DDA
DDO
D/NFAC
DDS&T

Attachments:
As stated.